

STATE OF MAINE
HANCOCK, SS.

UNIFIED CRIMINAL DOCKET
LOCATION: ELLSWORTH
CRIMINAL ACTION
DOCKET NO. CR-2022-241

STATE OF MAINE)	
)	
)	DEFENDANT'S MEMORANDUM IN AID
v.)	OF SENTENCING
)	
ELIOT CUTLER)	

NOW COMES Defendant, by and through undersigned counsel, and hereby submits the following Memorandum in support of the joint sentencing recommendation, and states as follows:

Introduction

On May 3, 2023, Defendant Eliot Cutler ("Eliot") will enter guilty pleas to the charges in the Complaint and accept an agreed-upon sentence of 4 years to the Department of Corrections with all but 9 months suspended and 6 years of probation. The probation conditions are agreed-upon and are as outlined by the State, with the exception of an agreed upon amendment to the terms as related to access to account information which will now reflect that Eliot will provide a list of all of his online accounts and, upon demand, access them in the presence of Probation and Parole. By agreement, Eliot will start serving his 9-month sentence on June 1, 2023, at 9:00 a.m.

Eliot's plea and sentencing will end the most difficult, life-altering chapter in Eliot's life. Eliot has gone from being a highly successful attorney and respected public leader to a person viewed by many as a pariah. His fall has been catastrophic, his reputation is in tatters, and he will now live out the final years of his life in a way he never imagined.

Eliot has and will accept total and full responsibility for his crimes for which he feels deeply ashamed. He recognizes the great harm he caused to those whose images he viewed as well as the harm to his own family by committing his crimes.

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Eliot's Personal Background

Eliot is well known to nearly everyone in Maine. He grew up in Bangor and it was clear from a young age that he was gifted and highly intelligent. Eliot attended Deerfield Academy for high school and then went on to Harvard College, graduating *cum laude* in 1968. Eliot then graduated from Georgetown University Law Center in 1974.

Eliot worked as an aide for Senator Muskie, where he helped craft the Clean Air Act, the Clean Water Act, Superfund, the National Environmental Policy Act, and other environmental laws, while also working to reform and redirect the federal government's disaster relief practices.

Eliot also served in the White House under President Jimmy Carter as Associate Director for Natural Resources, Energy and Science in the Office of Management and Budget where he was responsible for overseeing the policies and budgets of the Departments of Agriculture, Energy and Interior, the Environmental Protection Agency, the National Aeronautics and Space Administration, and scientific and cultural agencies. He also served as White House Energy Policy Chief during the energy crises of the late 1970s. Eliot represented President Carter in negotiations that led to the settlement of the Maine Indian land claims case and in other claims and matters involving Native American tribes, the reclassification of the Alaska public lands and in international energy negotiations.

Eliot went on to work as an attorney in private practice and was a founding partner of Cutler & Stanfield, LLP, a law firm that grew to be the second largest environmental law firm in the United States, representing both private sector and public jurisdiction clients in nearly 30 states in complex infrastructure projects involving airports, highways, and other major public and private facilities. Among a series of successes during the 1980s and 1990s, Eliot conceived and implemented the legal and political strategy that led to the development of the Denver International Airport, the only new commercial airport built in the United States in more than

half a century and one of the most successful airports in the world. Cutler & Stanfield merged in 2000 with an international law firm, and Eliot turned his attention then to international transactional law. Eliot resigned from his law firm partnership at the end of 2009 to begin his 2010 gubernatorial campaign and served as senior counsel to the firm until December 2013.

Among other business projects, Eliot served on the boards of both private and publicly-held business corporations, and he was a principal investor in a number of Maine energy and seafood ventures.

Eliot also served as President and Chairman of the Emmanuel and Pauline Lerner Foundation. Eliot served on the Board of Visitors of the Muskie School of Public Service at the University of Southern Maine for more than 2 decades, including as Chair for more than 10 years, and he helped the Muskie School become one of the leading graduate schools of public policy in the United States. He was also the founding Chief Executive Officer of the Maine Center for Graduate Professional Studies in the University of Maine system.

Eliot is married and has two adult children.

Eliot's health is compromised. Among other medical challenges, Eliot suffers from cutaneous t-cell lymphoma (CTCL), a rare cancer that makes him highly susceptible to cellulitis, a life-threatening skin infection that he has experienced on five occasions and for which he has twice been hospitalized. This has been confirmed by Eliot's doctor, Richard Edelson, M.D., an established expert in CTCL and secondary immunosuppression due to that cancer.

Eliot is almost 77 years old. He has zero criminal record.

Eliot's Offense Conduct

Over the course of decades, Eliot was addicted to pornography, which ultimately led to his viewing of images of child pornography. His addiction was such that he downloaded, *en masse*, hundreds of images and videos at any one time. *However, it is important to note that the*

number of images and videos noted by the State likely is several times greater than the actual number of different images and videos in his possession or that he actually viewed. Many videos are counted by the State as multiple .jpg images, so there could be included in the State's count hundreds of images for any one video. Moreover, Eliot did not actually view many of the images and videos. This, too, is an important point given the references to a number of specific images and videos in the State's Memorandum, images and videos that Eliot acknowledges came to him as part of the en masse batch downloading process and that he retained in a "hoarding" behavior pattern. It is unfortunately common in child pornography cases for there to be seized "many thousands" of images and videos as images and videos are easiest to obtain in large mass downloads. It is also common to have, within these batch downloads, images of extremely young children or children subjected to unusual harm; these were not of interest to Eliot, and he did not view them.

To be clear: Eliot has from the day of the search warrant, and continuously ever since, accepted total and complete responsibility for his crimes. He has admitted to possessing child pornography in large amounts and over the course of many years. He has and will express to this Court his remorse for his actions. He committed these crimes, has never said otherwise, and accepts that he is guilty. And he never has had inappropriate contact with any minor, ever.

The State has indicated in its Sentencing Memorandum that it will seek to show to the court a copy of several videos that are representative of those found on Eliot's computer. This is unnecessary and inappropriate. Nor would it necessarily be the case, as noted above, that the videos the State chose to show would be among the videos that Eliot actually viewed. The State has described the videos adequately and in detail, and counsel for Defendant and Eliot do not wish to be subjected to viewing the videos as part of the court's review process.

Eliot's Post-Arrest Actions

Eliot was evaluated by highly respected forensic psychologist Diane Tennies, Ph.D., in April, May, and September of 2022. During his evaluation, Eliot expressed remorse and shame as well as empathy for the victims of the child pornography industry. Dr. Tennies noted that Eliot was highly motivated to make changes to prevent recidivism, and during the course of the evaluation process he completed an intensive 30-day residential treatment program for problematic sexual behaviors. Eliot's attendance at the Paradise Creek Recovery Center in Idaho was highly intensive and combined what would otherwise be a year and a half of intensive individual and group therapy into 28 days. From dawn until well into each night Eliot fully engaged in the program, an essential part of his recovery.

Importantly, Dr. Tennies noted that Eliot's future risk of reoffending was rated in the very low risk range:

To assess future recidivism risk in a more structured manner, the Child Pornography Offender Risk Tool: Version 2 (CPORT-2) was utilized. This is an actuarial⁵ measure of relative risk for sexual offense recidivism and is a seven-item instrument created by A. Eke, PhD, M. Helmus, PhD and M. Seto, PhD for use with adult male sexual offenders who are at least 18 year of age and are charged/convicted with offences related to CPAM.⁶ Mr. Cutler received a total score of 0 (zero) as none of the risk present were identified as present. This indicates a low risk for recidivism when compared to those with a higher score.

... Mr. Cutler's future risk of reoffending is rated in the very low risk range now that he has completed treatment. Prior to treatment, the risk was rated in the below average range.⁸ He also has unique factors that may be protective and warrant highlighting. He has stable housing, has no past legal history, has been married for an extended period of time and denied a history of past mental health difficulties. There is no report of a history of violence or criminality. His cognitive functioning, while not formally assessed, appeared to be in the high average or above range. He described a supportive family. He evidenced readiness and was receptive to therapeutic interventions and has already completed the recommended treatment. These factors are actuarially associated with a reasonable likelihood that his recidivism is low.

Eliot's discharge evaluation from Paradise Creek Recovery Center also noted:

While in treatment, he gained an understanding of his acting out cycle and was able to implement interventions to help prevent further acting out. In addition, he identified a strong relapse prevention plan, that if followed will help prevent further relapse. He reported that he is

committed to continuing his therapy and recovery work on an outpatient basis. He is also committed to sobriety and recognizes that pornography is not a healthy thing in his life. It is my opinion that he does not meet the criteria diagnostically for pedophilia and any sexual interest in children is exclusively through digital means. This came about as a result of the tolerance effect and ceasing to have an emotional high from the adult oriented images that he had been viewing. He exhibited a great deal of regret over his choices to view child pornography, and at times, was tearful when discussing it. He recognizes that his choices to keep secrets and not communicate openly with others was not healthy for him and contributed to his choices to get involved in compulsive pornography viewing. He is now committed to be more open with his spouse, if indeed his marriage does continue.

It is my clinical opinion that the client will be compliant with outpatient treatment recommendations and that he will exhibit a life long commitment to his sobriety and recovery. The prognosis of his recovery is good as long as he does engage in continued and ongoing treatment.

Eliot has also been in therapy with Robert Klotz, a Certified Sex Addiction Therapist, since the fall of 2022, and also attends weekly counseling with psychologist Dr. Moreen Halmo. Eliot is doing the work to ensure that he never engages in any of this behavior ever again, and the experts all agree that Eliot is at very low risk of ever doing so.

Comparative Sentencing Information

Previously, a list of comparative sentences was provided to this Court by counsel for Defendant that captured sentences from the last 10 years for persons convicted of the offenses that Eliot will plead guilty to. The State has also provided similar information, with sentences going back to 2006, though stopping in 2020.¹

Reviewing the most recent data from 2013-2023, the median unsuspended sentence was calculated for a defendant who was convicted of possession of sexually explicit material of a minor under the age of 12, Class C. That median unsuspended sentence was 6 months.

The State provided comments of how other prosecutorial districts handle child pornography cases. Counsel for Defendant would respectfully note that while these districts are

¹ The State's information includes the names of each defendant; the Department of Corrections no longer provides defendant-specific sentencing information and would not provide prior name specific data to counsel for Defendant.

noted as having “policies” and “minimums,” counsel for Defendant has had cases in both districts that involved sentences that were a far cry from the “minimum” noted. Indeed, many of the comparative sentences (not handled by counsel for Defendant) that were specifically noted by name came out of these two districts. Additionally, counsel for Defendant has handled cases like Eliot’s in multiple other prosecutorial districts, and the sentences imposed in those cases were far *less* than that which would be imposed here.

A review of the State’s information from Vermont confirms that sentences in Vermont are similar to what we see in Maine. And Eliot’s proposed sentence here is similar to, if not more severe than, many of the cases in Vermont.

And, importantly, the fact that Special Agent Lang, a person probably in the best position to weigh in on similar cases given his involvement in child pornography investigations for many, many years, has confirmed that the proposed sentence here is consistent with similar cases is significant.

The Recommended Sentence

A sentence of 4 years to the Department of Corrections, with all but 9 months suspended, and 6 years of probation is a massive sentence for someone like Eliot – a health-compromised defendant who is nearly 77 years old, has no prior criminal record, and whose likelihood of recidivist behavior has been assessed by experts to be virtually nil. Many who have been sentenced in similar cases have received sentences far, far less than that which Eliot has agreed to. It is unknown whether those defendants were even, like Eliot, someone who has led an otherwise crime-free life, has an exemplary record of committed public service, and who engaged fully and completely in treatment.

The Old Testament lament in 2 Samuel 1:19 of “How are the Mighty Fallen” is also the unfortunate tale of Eliot Cutler, who once was considered a pillar of the legal community, a

dedicated public servant, and representing nothing but the very best in all he did and was. While those accomplishments cannot be taken away from Eliot, today when the name Eliot Cutler comes up there will be few that mention of his prior success and service, and the first thing that will come to mind is that he was that person convicted of possessing child pornography. And that, in and of itself, is a punishment unlike any other.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that this Court sentence Defendant to 4 years to the Department of Corrections, all but 9 months suspended, and 6 years of probation.

Date: 5/1/23



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